ZAIDI DALI v. PP & OTHER APPEALS

HIGH COURT MALAYA, IPOH
MOSES SUSAYAN J
[CRIMINAL APPEAL NOS: AA-42R(A)-4-10-2022, AA-42R(A)-5-10-2022, AA-42R(A)-6-10-2022 & AA-42R(A)-7-10-2022]
11 NOVEMBER 2025

Abstract – *(i) The failure to produce a valid certificate under s. 43(4) of the Malaysian Anti-Corruption Commission Act 2009 for intercepted communications, such as video or audio recordings, constitutes a substantive legal defect, rendering the recordings inadmissible as evidence. Without the certificate, any critical evidence derived from the intercepted material, establishing actus reus or mens rea, must be excluded, which can fatally undermine the prosecution's case; (ii) The investigating officer is required to maintain independence and impartiality; an investigating officer who is an active participant in the planning and execution of the entrapment operation compromises the fairness of the investigation and the reliability of the prosecution's case.*

CRIMINAL LAW: *Offences – Corruption – Solicitation by public officers and receipt of gratification – Inducement to refrain from immigration taking enforcement action against premises – Whether elements of charges proven – Malaysian Anti-Corruption Commission Act 2009, ss. 16(a)(B), 17(a), 43(4), 50(1)*

CRIMINAL PROCEDURE: *Appeal – Appeal against conviction and sentence – Solicitation by public officers and receipt of gratification – Inducement to refrain from immigration taking enforcement action against premises – Public officers convicted and sentenced accordingly at Sessions Court – Substantive legal defects, delay in lodging report, non-independence of investigating officer and misapplication of law – Whether charges proven – Whether conviction and sentence of public officers safe – Malaysian Anti-Corruption Commission Act 2009, ss. 16(a)(B) 17(a), 43(4) & 50(1)*

CRIMINAL PROCEDURE: *Appeal by prosecution – Appeal against sentence – Adequacy – Solicitation by public officers and receipt of gratification – Inducement to refrain from immigration taking enforcement action against premises – Public officers convicted and sentenced accordingly at Sessions Court – Whether sentences adequate – Whether reasonable and proportionate to seriousness of offence – Malaysian Anti-Corruption Commission Act 2009, ss. 16(a)(B) & 17(a)*

EVIDENCE: *Admissibility – Recordings – Interception – Corruption – Solicitation by public officers and receipt of gratification – Prosecution relied on intercepted video and audio recordings obtained through covert surveillance – Non-production of certificate under s. 43(4) of Malaysian Anti-Corruption Commission Act 2009 – Whether interception lawfully authorised – Whether recordings admissible*

Jabatan Imigresen Malaysia Negeri Perak had conducted an enforcement raid at an entertainment outlet co-owned by the complainant and several local patrons and foreign women without permits were arrested. The complainant, in an attempt to seek protection from further immigration raids, was said to have approached the Head of the Prosecution Unit, Perak Immigration Department ('first appellant') to convey his request to the State Director of Immigration ('second appellant'). A meeting was held where the second appellant allegedly demanded RM10,000 monthly. A reduced payment of RM7,000 for November and December 2016 was agreed, with RM10,000 to resume from January 2016. The complainant lodged a complaint with the Malaysian Anti-Corruption Commission. In a sting operation, the complainant handed marked RM7,000 to the first appellant who was immediately arrested. On the same night, a second trap led to the second appellant's arrest where the same marked money was recovered from his bag. The appellants were charged at the Sessions Court, under ss. 17(a) and 16(a)(B) of the Malaysian Anti-Corruption Commission Act 2009 ('MACCA'), for solicitation by public officers. The intercepted video and audio recordings obtained through covert surveillance formed a substantial part of the prosecution's case in establishing the gratification element under s. 17(a) of the MACCA. At the conclusion of the trial, the Sessions Court convicted (i) the first appellant under s. 17(a) of the MACCA; (ii) the second appellant under s. 17(a) of the MACCA; and (iii) both the appellants under s. 16(a)(B) of the MACCA, read with s. 34 of the Penal Code ('PC'). The appellants were each sentenced to (i) three years imprisonment and a RM50,000 fine, in default ten months' imprisonment, for the offence under s. 16(a)(B) of the MACCA; and (ii) three years' imprisonment and RM35,000 fine, in default eight months' imprisonment, for the offence under s. 17(a) of the MACCA. The sentences were ordered to run concurrently. Hence, the present appeals by (i) the appellants, respectively, against their sentences and convictions; and (ii) the prosecution against the adequacy of the sentences. In support of their appeals, the appellants argued that: (i) there was a failure by the prosecution to produce the certificate under s. 43(4) of the MACCA in the charge against the appellants for the offence under s. 17(a) of the MACCA; (ii) there was non-preparation of the recovery money, under s. 33 of the MACCA, in the charge against the appellants for the offence under s. 17(a) of the MACCA; (iii) the investigating officer lacked independence in the joint conviction under s. 16(a)(B) of the MACCA, read with s. 34 of the PC; (iv) there was a delay in lodging a report and an omission to mention solicitation; and (v) the Sessions Court misapplied s. 50(1) of the MACCA.

Held (allowing appeals by appellants; dismissing appeals by prosecution):

(1) Section 43(4) of the MACCA mandates that a certificate issued by the Public Prosecutor or a duly-authorised Commissioner shall serve as conclusive evidence that the interception was lawfully authorised. In the present case, no such certificate was produced by the prosecution. The absence of the s. 43(4) certificate constitutes not merely a procedural

irregularity but a substantive legal defect. Given that the recordings were critical in establishing both the *actus reus* and *mens rea* of the charges, the failure to comply with s. 43(4) left a significant evidentiary gap in the prosecution's case. The Sessions Court erred in law by admitting the recordings without a valid certificate under s. 43(4). Accordingly, the impugned recordings and their associated transcripts must be excluded from evidentiary consideration. The absence of this crucial evidence materially affected the integrity of the conviction. (paras 19, 21, 24 & 25)

(2) The RM7,000 was alleged to have been received solely by the first appellant, not jointly with the second appellant. The omission to prepare a recovery memo at the point of arrest undermined the verifiability of when, where and how the marked notes were recovered from the first appellant. The assertion that the same money was later found on the second appellant could not retrospectively validate the alleged recovery from the first appellant without independent corroboration. In the absence of any seizure list, recovery memo, physical verification or acknowledgment by the first appellant and given the failure to provide the serial numbers and the impugned audio-visual recording of cash being physically recovered directly from the first appellant, such omissions could not be dismissed as mere procedural irregularities curable under s. 422 of the Criminal Procedure Code. Furthermore, the failure to prepare a recovery memo constituted a substantive evidentiary gap that broke the chain of proof and rendered the element of 'receipt' under s. 17(a) of the MACCA unproven. (paras 32, 34 & 35)

(3) The investigating officer lacked the necessary independence expected of an impartial and objective investigator. Evidence clearly showed that the investigating officer was directly involved in planning, briefing and coordinating the entrapment operation that led to the arrest of the appellants. She was not an independent investigator but an active and important participant in the events forming the subject matter of the charge. The failure to ensure a separate uninvolved investigating officer tainted the fairness of the investigation and the reliability of the prosecution's case. (para 39)

(4) The unexplained delay in complaining and the omission to mention any demand of RM10,000 in the earliest report fatally weakened the prosecution's case. The entire soliciting charge rested solely on the complainant's uncorroborated testimony, which was viewed with caution. The failure to mention the demand by the first appellant at the earliest opportunity, coupled with the absence of corroborative testimony or contemporaneous documentation, undermined the complainant's credibility. Further, no credible explanation was

provided by the complainant for failing to name the appellant in his report, despite having alleged a demand for gratification, a central element of the offence of solicitation under s. 16(a)(B) of the MACCA. This omission deprived the prosecution of crucial corroboration, rendering the charge of solicitation inherently unsafe. (paras 44, 45 & 47)

(5) Before the statutory presumption under s. 50(1) of the MACCA could operate, the prosecution must first prove that the appellants actually received the alleged gratification; the prosecution failed to do so. The basic fact of receipt was not proven to the requisite element of the charge against the appellants. The Sessions Court applied the presumption without meeting the required legal conditions. By doing so before proving that the appellants actually received the money, the Sessions Court wrongly shifted the burden of proof to the appellants. Section 50(1) was wrongly invoked. The application of the presumption materially prejudiced the appellant and contributed to a miscarriage of justice. The conviction under the affected charge could not be sustained. (paras 52 & 53)

(6) The convictions entered against both appellants, under ss. 16(a)(B) and 17(a) of the MACCA, were unsafe. All three convictions and corresponding sentences were set aside. The appellants were acquitted and discharged of all charges. The prosecution's appeals were dismissed. (para 55)

Case(s) referred to:

Azahar Hj Abdul Aziz v. PP [2019] CLJU 2032; [2019] 1 LNS 2032 CA ***(refd)***
Bhandulananda Jayatilake v. PP [1981] CLJU 139; [1981] 1 LNS 139 FC ***(refd)***
Davendar Singh Sher Singh v. PP [2012] CLJU 261; [2012] 1 LNS 261 CA ***(refd)***
Magendran Mohan v. PP [2011] 1 CLJ 805 FC ***(refd)***
Mohan Singh v. State Of Rajasthan 1987 Law Suit (Raj) 188 ***(refd)***
Mohd Johi Said & Anor v. PP [2005] 1 CLJ 389 CA ***(refd)***
PP v. Alias Md Yusof [2019] 7 CLJ 618 CA ***(refd)***
PP v. Hassim Ma'asah [2012] CLJU 595; [2012] 1 LNS 595 HC ***(refd)***
PP v. Ma'arif [1969] 2 MLJ 65 ***(refd)***
PP v. Zul Hassan & Ors [2013] 7 CLJ 141 CA ***(refd)***
Ramli Sutu v. PP [1998] 5 CLJ 671 HC ***(refd)***
Sia Soon Suan v. PP [1965] CLJU 165; [1965] 1 LNS 165 FC (refd)
Tengku Mahmood v. PP [1974] CLJU 176; [1974] 1 LNS 176 HC ***(refd)***

Legislation referred to:

Anti-Corruption Act 1997 (repealed), s. 39(4)
Civil Law Act 1956, s. 3(1)
Criminal Procedure Code, ss. 64, 316, 422
Malaysian Anti-Corruption Commission Act 2009, ss. 16(a)(B), 17(a), 24(1), 33, 43(1)(c), (4), 50(1)
Penal Code, s. 34

(Criminal Appeal Nos: AA-42R(A)-4-10-2022 & AA-42R(A)-5-10-2022)
For the appellant - M Athimulan; M/s Athimulan & Co
For the respondent - Maziyah Mansor; DPP, MACC

(Criminal Appeal Nos: AA-42R(A)-6-10-2022 & AA-42R(A)-7-10-2022)
For the appellant - Mohd Baharuddin Ahmad Kassim; M/s Bahar Rusnan & Assocs
For the respondent - Maziyah Mansor; DPP, MACC

[Editor's note: Appeal from Sessions Court; Case No: AA-61-R-2-01-2018]

Reported by Najib Tamby

JUDGMENT

Moses Susayan J:

Introduction

[1] These are appeals by Zaidi bin Dali ("the first appellant") and Zuhairin bin Yahya ("the second appellant") against their respective convictions and sentences arising from three separate criminal charges before the Sessions Court, Ipoh. The appeals are heard together. Each charge concerns alleged corruption involving inducements to refrain from immigration taking enforcement action against an entertainment premises known as The Bos KTV in Seri Manjung, Perak.

[2] The appeals are registered as follows:

(i) AA-42R(A)-4-10/2022 – Appeal by the first appellant against conviction and sentence under s. 17(a) of the Malaysian Anti-Corruption Commission Act 2009 (hereinafter referred to as MACC Act 2009);

(ii) AA-42R(A)-6-10/2022 – Appeal by the second appellant against conviction and sentence under s. 17(a) of the MACC Act 2009;

(iii) AA-42R(A)-5-10/2022 and AA-42R(A)-7-10/2022 – Appeals by both appellants against joint conviction and sentence under s. 16(a)(B) of the MACC Act 2009, read with s. 34 of the Penal Code.

Appeal No: AA-42R(A)-4-10/2022 – First Appellant

[3] In this appeal, the first appellant challenges his conviction and sentence pursuant to a charge under s. 17(a) of the MACC Act 2009, as framed in Case No: AA-61R-2-01/2018. The particulars of the offence alleged that on 11 November 2015, at approximately 9.55pm, at the parking area of Meru Valley Golf & Country Club, Ipoh, the appellant, as the Head of the Prosecution Unit, Perak Immigration Department, being an agent of the Government of Malaysia, corruptly obtained RM7,000 for himself and the State Director of Immigration from one Nga Chee Jiek. This gratification was allegedly received as an inducement to ensure that no inspection or raid would be conducted at the premises of The Bos KTV, situated at No 92-96, Level 1, Persiaran PM 2/5, Pusat Bandar Seri Manjung, Perak.

[4] The conduct amounts to an offence under s. 17(a), punishable under s. 24(1) of the MACC Act. The charge against the first appellant reads as follows:

> Bahawa kamu, dengan niat bersama, pada 11.11.2015 jam lebih kurang 9.55 malam di tempat letak kereta, Meru Valley Golf & Country Club, Ipoh, di dalam Daerah Kinta, di dalam Negeri Perak, sebagai ejen kepada Kerajaan Malaysia, iaitu Ketua Unit Pendakwaan Jabatan Imigresen Malaysia Negeri Perak, telah secara rasuah memperoleh suatu suapan untuk diri kamu dan Pengarah Jabatan Imigresen Malaysia Negeri Perak, iaitu wang tunai berjumlah RM7,000.00 daripada Nga Chee Jiek (No. KP: 760117-08-5207) sebagai satu dorongan bagi melakukan suatu perbuatan berhubungan dengan hal ehwal principal kamu iaitu memastikan tiada pemeriksaan dan serbuan dijalankan ke atas sebuah premis perniagaan pusat hiburan The Bos KTV beralamat di No. 92-96, Tingkat 1, Persiaran PM 2/5, Pusat Bandar Seri Manjung, dan oleh yang demikian, kamu telah melakukan suatu kesalahan di bawah Seksyen 17(a) Akta Suruhanjaya Pencegahan Rasuah Malaysia 2009 yang boleh dihukum di bawah Seksyen 24(1) Akta Suruhanjaya Pencegahan Rasuah Malaysia 2009.

Appeal No: AA-42R(A)-6-10-2022 – Second Appellant

[5] In this appeal, the second appellant challenges his conviction and sentence arising from Case No: AA-61R-3-01/2018, under s. 17(a) of the MACC Act 2009. It was alleged that on 12 November 2015, at about 12.05am, at Restoran Knock-Knock, Meru Jaya, Ipoh, the appellant, then Director of the Perak Immigration Department, did, in furtherance of a common intention and *via* the first appellant, corruptly obtain RM7,000 from Nga Chee Jiek. The gratification was alleged to be a bribe for ensuring no inspection or raid would be conducted at the premises of The Bos KTV.

[6] This too constitutes an offence under s. 17(a), punishable under s. 24(1) of the MACC Act. The charge against the second appellant reads as follows:

> Bahawa kamu, dengan niat bersama, pada 12.11.2015 jam lebih kurang 12.05 tengah malam, di Restoran Knock-Knock Meru Jaya, Ipoh, di dalam Daerah Kinta, di dalam Negeri Perak, sebagai ejen kepada Kerajaan Malaysia, iaitu Pengarah Jabatan Imigresen Malaysia Negeri Perak, telah secara rasuah memperoleh suatu suapan untuk diri kamu iaitu wang tunai berjumlah RM7,000.00 daripada Nga Chee Jiek (No. KP: 760117-08-5207) melalui Zaidi Bin Dali, Ketua Unit Pendakwaan Jabatan Imigresen Malaysia Negeri Perak sebagai satu dorongan bagi melakukan suatu perbuatan berhubungan dengan hal ehwal principal kamu iaitu memastikan tiada pemeriksaan dan serbuan dijalankan ke atas sebuah premis perniagaan pusat hiburan The Bos KTV beralamat di No. 92-96, Tingkat 1, Persiaran PM 2/5, Pusat Bandar Seri Manjung, dan oleh yang demikian, kamu telah melakukan suatu kesalahan di bawah Seksyen 17(a) Akta Suruhanjaya Pencegahan Rasuah Malaysia 2009 yang boleh dihukum di bawah Seksyen 24(1) Akta Suruhanjaya Pencegahan Rasuah Malaysia 2009

Appeal Nos: AA-42R(A)-5-10/2022 & AA-42R(A)-7-10/2022 – Joint Charge Under Section 16(a)(B)

[7] Both appellants further appeal against a joint conviction recorded in Case No: AA-61R-1-01/2018, which forms the subject of these two appeals. The charge was framed under s. 16(a)(B) of the MACC Act 2009, read together with s. 34 of the Penal Code. It was alleged that on 5 November 2015, at approximately 9pm, at the Club House, Meru Valley Golf & Country Club, Ipoh, the appellants, acting in concert, did corruptly solicit RM10,000 per month from Nga Chee Jiek, as an inducement for refraining from carrying out any inspection or enforcement action against The Bos KTV. The joint charge against the first and second appellants reads as follows:

> Bahawa kamu, dengan niat bersama, pada 5.11.2015 jam lebih kurang 9.00 malam di Club House Meru Valley Golf & Country Club, Ipoh, di dalam Daerah Kinta, di dalam Negeri Perak, telah secara rasuah **meminta suatu suapan** untuk diri kamu, iaitu wang tunai berjumlah RM10,000.00 setiap bulan daripada Nga Chee Jiek (No. KP: 760117-08-5207) sebagai satu dorongan untuk kamu, sebagai pegawai badan awam, iaitu Ketua Unit Pendakwaan Jabatan Imigresen Malaysia Negeri Perak, dan Pengarah Jabatan Imigresen Malaysia Negeri Perak, untuk melakukan suatu perkara yang dengannya badan awam kamu terlibat, iaitu untuk memastikan tiada pemeriksaan dan serbuan dijalankan ke atas sebuah premis perniagaan pusat hiburan The Bos KTV beralamat di No. 92-96, Tingkat 1, Persiaran PM 2/5, Pusat Bandar Seri Manjung, dan oleh yang demikian, kamu telah melakukan suatu kesalahan di bawah Seksyen 16(a)(B) Akta Suruhanjaya Pencegahan Rasuah Malaysia 2009 yang dibaca bersama Seksyen 34 Kanun Keseksaan dan boleh dihukum di bawah Seksyen 24(1) Akta Suruhanjaya Pencegahan Rasuah Malaysia 2009.
>
> (emphasis added)

[8] Both appellants, being public servants, were alleged to have sought such gratification for themselves, thereby committing an offence under s. 16(a)(B), which constitutes an offence of solicitation by public officers, and is punishable under s. 24(1) of the MACC Act.

Prosecution's Appeal

[9] The Sessions Court Judge, sentenced the first appellant to three years' imprisonment and a RM50,000 fine (ten months in default) for the s. 16(a)(B) offence, and another three years' imprisonment and RM35,000 fine (eight months in default) for the s. 17(a) offence, both sentences were to run concurrently. The second appellant was sentenced to identical concurrent sentences for the same respective offences.

[10] The prosecution appeals against the sentences on the ground that the sentences were manifestly inadequate. The appeals were filed under the following case numbers:

A (i) AA-42(R)(A)-8-10/2022 – against the second appellant's sentence for offence under s. 17(a) of the MACC Act;

(ii) AA-42(R)(A)-9-10/2022 – against the first and second appellants' sentence for offence under s. 16(a)(B) of the MACC Act;

B (iii) AA-42(R)(A)-10-10/2022 – against the first appellant's sentence for the offence under s. 17(a) of the MACC Act.

Background Facts

[11] The complainant in this case, Nga Chee Jiek (SP3), is a co-owner of an entertainment outlet known as The Boss KTV in Manjung, Perak. On C 13 October 2015, the complainant was informed by his staff that the Jabatan Imigresen Malaysia Negeri Perak (JIM Perak) had conducted an enforcement raid at the premises, during which several local patrons and foreign women without permits were arrested.

D **[12]** The complainant allegedly sought protection from further immigration raids. On 27 October 2015, he allegedly approached the first appellant, Zaidi bin Dali, to convey his request to the second appellant, Zuhairin bin Yahya, the State Director. A meeting was held on 5 November 2015 at Meru Golf Resort, where the second appellant allegedly demanded RM10,000 monthly. E A reduced payment of RM7,000 for November and December 2015 was allegedly agreed, with RM10,000 to resume from January 2016. The complainant lodged an MACC complaint. On 11 November 2015, in a sting operation, the complainant allegedly handed marked RM7,000 to the first appellant, who was arrested immediately thereafter. The same night, past midnight, a second trap led to the second appellant's arrest at Knock-Knock F Cafe, where the same marked money was recovered from his bag. The entire scheme was captured *via* surveillance recordings and confirmed by MACC officer testimony.

Elements Of The Charges Under Section 17(a) And Section 16(a)(B) Of The MACC Act 2009

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[13] The elements of charges for the respective offence are as follows:

(i) offence under s. 16(a)(B) of the MACC Act 2009, the prosecution must establish the following elements beyond a reasonable doubt:

H (a) that the accused solicited gratification from one Nga Chee Jiek (PW3);

(b) that such solicitation was made corruptly, namely, for the sum of RM10,000 per month for himself; and

I (c) that the solicitation was made as an inducement to ensure that no inspection or raid would be conducted on the entertainment centre operated by PW3;

(ii) offence under s. 17(a) of the Malaysian Anti-Corruption Commission Act 2009, the prosecution is required to prove:

(a) that the accused received gratification in the sum of RM7,000 from the said Nga Chee Jiek (PW3);

(b) that the receipt of the said gratification was corrupt in nature; and

(c) that the gratification was received as an inducement to ensure that no inspection or raid would be carried out on the entertainment premises concerned.

Appeal By Way Of Rehearing And The Duty Of The Court

[14] An appeal before this court is heard by way of rehearing under s. 316 of the Criminal Procedure Code. In exercising its appellate jurisdiction, the court may dismiss the appeal, reverse an acquittal and order retrial or conviction, or, in the case of a conviction, reverse, alter, or vary the findings or sentence. The appellate court is empowered to review all the evidence, reassess the credibility of witnesses, and draw its own inferences.

[15] The principle is consistently affirmed in *PP v. Alias Md Yusof* [2019] 7 CLJ 618; [2019] MLRAU 49; *PP v. Ma'arif* [1969] 2 MLJ 65; [1969] 1 MLRH 596, and *Davendar Singh Sher Singh v. PP* [2012] CLJU 261; [2012] 1 LNS 261; [2012] 3 MLRA 114, which emphasise that an appeal is a continuation of the trial by way of rehearing and that all evidence is open to re-assessment to determine whether the trial court's findings are supported by evidence, properly evaluated, and free from misdirection.

[16] Additionally, in criminal appeals, the appellate court's duty is not merely to decide whether the trial court was wrong, but also to determine whether the conviction is safe. As observed by Gopal Sri Ram JCA in *Mohd Johi Said & Anor v. PP* [2005] 1 CLJ 389; [2005] 5 MLJ 409; [2004] 2 MLRA 425:

> Unlike civil appeals, where the appellant carries the burden of showing that the judge at first instance went wrong, in a criminal case the duty of the court is to consider whether the conviction is right. **The correct approach is therefore not whether the decision is wrong but whether the conviction is safe**.
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> (emphasis added)

[17] Guided by these principles, this court proceeds to evaluate the grounds of appeal with full authority to review, re-assess, and determine whether the conviction is safe.

First Ground: Failure To Produce Certificate Under Section 43(4) Of The MACC Act 2009 In The Charge Against The First And Second Appellants For Offence Under Section 17(a) Of The MACC Act 2009

[18] This court has considered the parties' submissions concerning the admissibility of the intercepted video and audio recordings obtained through covert surveillance. The recordings marked as P14B, P44A, and P71A(1) form a substantial part of the prosecution's case in establishing the gratification element under s. 17(a) of the MACC Act 2009.

[19] Section 43(4) of the MACC Act mandates that a certificate issued by the Public Prosecutor or a duly authorised Commissioner shall serve as conclusive evidence that the interception was lawfully authorised.

> 43. Power to intercept communications
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> (1) Notwithstanding the provisions of any other written law, the Public Prosecutor or an officer of the Commission of the rank of Commissioner or above as authorized by the Public Prosecutor, if he considers that it is likely to contain any information which is relevant for the purpose of any investigation into an offence under this Act, may, on the application of an officer of the Commission of the rank of superintendent or above, authorize any officer of the Commission:
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> (a) to intercept, detain and open any postal article in the course of transmission by post;
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> (b) to intercept any message transmitted or received by any telecommunication; or
>
> (c) to intercept, listen to and record any conversation by any telecommunication, and listen to the recording of the intercepted conversation.
>
> (2) When any person is charged with an offence under this Act, any information obtained by an officer of the Commission in pursuance of subsection (1), whether before or after such person is charged, shall be admissible at his trial in evidence.
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> (3) An authorisation by the Public Prosecutor or an officer of the Commission of the rank of Commissioner or above as authorized by the Public Prosecutor under subsection (1) may be given either orally or in writing; but if an oral authorization is given, the Public Prosecutor or the officer of the Commission of the rank of Commissioner or above as authorized by the Public Prosecutor shall, as soon as practicable, reduce the authorisation into writing.
>
> (4) *A certificate by the Public Prosecutor or the officer of the Commission of the rank of Commissioner or above as authorised by the Public Prosecutor stating that the action taken by an officer of the Commission in pursuance of subsection (1) had been authorized by him under that subsection shall be conclusive evidence that it had been so authorised, and such certificate shall be admissible in evidence without proof of signature thereof.*

(5) No person shall be under any duty, obligation or liability, or be in any manner compelled, to disclose in any proceedings the procedure, method, manner or means, or any matter related thereto, of anything done under paragraph (1)(a), (b) or (c).

(6) For the purpose of this section, "postal article" has the same meaning as in the Postal Services Act 1991.

(emphasis added)

[20] Under sub-s. (4) referred to above, a certificate by the Public Prosecutor or authorised Commissioner is conclusive proof that the interception was lawfully authorised. If no such certificate is produced, the prosecution fails to establish the legality and authenticity of the interception. Therefore, any recording, transcript, or communication obtained becomes inadmissible as it is not shown to have been lawfully authorised. The courts have held that this defect goes to the root of admissibility, rendering the evidence unreliable and unsafe to rely upon for conviction.

[21] In the present case, no such certificate was produced by the prosecution. While the prosecution contends that the omission is not fatal, as credible testimony from SP1, SP9, and SP11 suffices to establish the integrity and authenticity of the recordings, this court disagrees with the prosecution's contention in this respect. The absence of the s. 43(4) certificate constitutes not merely a procedural irregularity, but a substantive legal defect. The statutory language in s. 43(4) is clear and imperative. As affirmed by the Court of Appeal in *PP v. Zul Hassan & Ors* [2013] 7 CLJ 141; [2013] 5 MLRA 567, when a statute provides a specific regime governing admissibility, compliance is mandatory and common law principles cannot be invoked to circumvent it. The court in *Zul Hassan* (*supra*) expressly rejected reliance on s. 3(1) of the Civil Law Act 1956 or principles of common law, where Parliament has codified a statutory safeguard, such as s. 43(4) of the MACC Act 2009. It must be noted that in *Zul Hassan* (*supra*) the Court of Appeal referred to the failure to produce the certificate under s. 39(4) of the ACA 1997 (which Act is repealed by MACC Act 2009 and same provision is found in s. 43(4) of the MACC 2009) and stated such failure is fatal to the prosecution's case. The relevant passage from the case where the Court of Appeal expressly stated so is reproduced here:

[34] Mengikut rekod rayuan, pihak pendakwa telah memintas dan merakamkan beberapa perbualan telefon dan telah mengemukakan rekod-rekod tersebut sebagai eksh P65A, P66A, P67A, P69A, P70A dan P71A dan P87A. Transkripnya pula telah dikemukakan sebagai ekshs P65B, P66B, P67B, P69B, P70B, P71B dan P87B. Ekshibit-ekshibit tersebut, jika diterima masuk sebagai keterangan, tidak syak lagi akan menjadi keterangan yang penting bagi pihak pendakwaan membuktikan pembabitan responden-responden dengan perbuatan rasuah seperti yang dipertuduhkan terhadap mereka.

A [35] **Malangnya, tiada perakuan yang ditandatangani oleh pendakwa raya seperti** diperuntukkan di bawah s. 39(4) Akta 575 dikemukakan berhubung dengan eksibit-eksibit tersebut. Timbalan pendakwa raya terpelajar tidak mempertikaikan fakta mengenai ketiadaan perakuan tersebut tetapi berhujah bahawa eksibit-eksibit tersebut boleh diterima masuk di bawah prinsip undang-undang lazim ('common law'). Bagi menyokong hujah beliau, timbalan pendakwa raya merujuk kepada kes-kes *Kuruma Son of Kaniu v. The Queen* [1955] AC 197, *Mohd Ali Jaafar v. Public Prosecutor* [1998] 4 MLJ 210; [1998] 4 CLJ Supp 208 dan *Ng Yiu Kwok and Ors v. Public Prosecutor* [1989] 3 MLJ 166 (MA).

[36] Kami bersetuju dengan keputusan PK bahawa prinsip-prinsip undang-undang lazim adalah tidak terpakai dalam kes ini kerana kebolehterimaan masuk ekshibit-ekshibit tersebut sebagai keterangan adalah dengan jelas dikawal oleh peruntukan statutori iaitu s. 49 Akta.

[37] Adalah menjadi undang-undang mantap bahawa mahkamah tidak boleh mengimport prinsip-prinsip undang-undang lazim ('common law') dan bidang kuasa lain sekiranya telah sedia terdapat peruntukan statutori khusus mengenainya. Dalam kes *Raphael Pura v. Insas Bhd & Ors* [2003] 1 MLJ 513; [2003] 1 CLJ 61, Abdul Hamid Mohamad HMP (sebagaimana beliau ketika itu) berkata di ms 88:

> In my view, this court is bound by the provisions of our own rules and not that of any other country.
>
> ...
>
> Furthermore, this court too should be careful and slow to adopt the decisions of the courts in other countries, even on the basis that it forms parts of the common law of England, which on this point, it is not. Particular attention must be paid to the written law of this country. In other words, the provisions of s. 3(1) of the Civil Law Act 1956, must always be borne in mind.

[38] Pada pandangan kami, sekiranya undang-undang telah membuat peruntukan khusus mengenai kebolehterimaan masuk sesuatu keterangan, peruntukan tersebut hendaklah dipatuhi sepenuhnya. Justeru, mahkamah tidak boleh bergantung kepada peruntukan undang-undang lain, termasuklah undang-undang lazim ('common law').

[39] Kami bersetuju dengan pemerhatian yang dibuat oleh PK bahawa rakaman video yang ditanda sebagai eksh. P54A, P55A, P56A, P57A, P58A, [2013] 5 MLJ 489 at P59A, P60A, P61A, P62A, P63A dan P64A tidak boleh diberi pertimbangan atas alasan-alasan yang berikut:

(a) 'Pin hole camera' dan telefon bimbit di mana rakaman dibuat tidak dikemukakan di mahkamah bagi memastikan peralatan tersebut berada dalam keadaan baik;

(b) kualiti rakaman adalah tidak memuaskan di mana beberapa gambar dan beberapa bahagian perbualan tertentu yang dirakamkan tidak boleh dilihat atau didengar;

(c) beberapa bahagian perbualan yang dirakamkan tidak jelas atau tidak boleh difahami; dan

(d) tiada transkrip rakaman perbualan disedia dan/atau dibuat oleh pihak pendakwaan untuk dikemukakan di mahkamah.

[40] Dalam hal keadaan di mana rakaman gambar dan perbualan hilang dan tidak lengkap; tidak syak lagi terdapat kemungkinan yang keterangan tersebut adalah tidak tepat dan gambar yang dilihat dan perbualan yang didengar tidak boleh memberi gambaran sebenar mengenai apa yang berlaku. Ia juga boleh mengelirukan.

[41] Dalam kes *Ram Singh v. Col Ram Singh* AIR 1986 SC 3, syarat-syarat berikut telah dinyatakan oleh Mahkamah Agung India untuk membolehkan sesuatu rakaman perbualan diterima masuk sebagai keterangan:

(a) the voice of the speaker must be duly identified by the maker of the record or by others who recognise his voice. Where the maker has denied the voice it will require very strict proof to determine whether or not it was really the voice of the speaker.

(b) The accuracy of the tape recorded statement has to be proved by the maker of the record by satisfactory evidence direct or circumstantial.

(c) Every possibility of tempering with or erasure of a part of a tape recorded statement must be ruled out otherwise it may render the said statement out of context and, therefore, inadmissible.

(d) The statement must be relevant according to the rules of Evidence Act.

(e) The recorded cassette must be carefully sealed and kept in safe or official custody.

(f) The voice of the speaker should be clearly audible and not lost or distorted by other sounds or disturbance.

[42] Pendekatan yang sama telah diambil oleh mahkamah di Malaysia, dalam kes *Mohd Ali Jaafar v. Public Prosecutor* [1998] 4 MLJ 210; [1998] 4 CLJ Supp 208, apabila Hakim Augustine Paul (sebagaimana beliau ketika itu) telah menggariskan prosedur yang perlu diikuti sebelum sesuatu rakaman gambar dan/atau perbualan boleh diterima masuk sebagai keterangan. Prosedur tersebut telah diringkaskan seperti berikut di ms 226 (MLJ); 222-223 (CLJ):

(a) the tape was run through and found to be clean before the recording was made;

(b) the machine was in proper working order;

(c) the tape was not tampered with or altered in any way - it should be established in whose possession the tape was at all times;

(d) the officers (or other witnesses) played the tape over after making the recording and heard voices which they can identify;

A (e) a transcript was prepared of the voices; if it was just taken down in shorthand and the typed transcript prepared from the shorthand notes then the notes should be saved;

(f) the officers (or other witnesses) played over the recording and checked it with the transcript as to the identity of the voices and as to the conversation.

B (emphasis added)

[22] The prosecution's argument that *Zul Hassan* (*supra*) is distinguishable on the basis that it concerned telephone interceptions is misplaced. The core principle emerging from that case is that statutory preconditions to C admissibility under s. 43 of the MACC Act 2009 cannot be circumvented. That principle applies equally to all forms of electronic or digital recordings obtained covertly in the course of an investigation, whether they are audio, video, or audio-visual. The distinction drawn in *Azahar Hj Abdul Aziz v. PP* [2019] CLJU 2032; [2019] 1 LNS 2032 between "video recordings" and D "intercepted communications" under s. 43 of the MACC Act may be open to question, as it appears to narrow the statutory language in a manner that may not fully reflect the broader legislative intention behind the safeguards in s. 43.

[23] Section 43(1)(c) of the MACC Act expressly includes the power "to E intercept, listen to and record any conversation by any telecommunication", and in sub-s. (4) it mandates a certificate from the Public Prosecutor or a duly authorised Commissioner to ensure the lawfulness and integrity of such evidence. The safeguard applies to covert recordings, regardless of whether the recording was initiated or otherwise. This court holds that s. 43 is F directly applicable to the present case. The case of *Zul Hassan* (*supra*) affirms that admissibility hinges on strict procedural compliance with s. 43(4). The use of CCTV, video, or pinhole instead of telephone interception of calls cannot be a loophole to bypass the mandatory certification requirement. If the video recording captures a conversation, then by substance, it constitutes an interception within the meaning of s. 43. Any contrary interpretation G undermines the safeguard's objective, to ensure fairness and prevent abuse in covert operations. Accordingly, the prosecution's reliance on *Azahar Hj Abdul Aziz* (*supra*) does not cure the failure to comply with s. 43, and the impugned recordings are inadmissible.

H **[24]** Given that the recordings were critical in establishing both the *actus reus* and *mens rea* of the charges, the failure to comply with s. 43(4) leaves a significant evidentiary gap in the case of the prosecution. In a criminal trial, particularly one involving anti-corruption laws where covert methods are deployed, statutory safeguards are designed to ensure transparency and fairness.

I **[25]** This court finds that the learned Sessions Judge erred in law by admitting the recordings without a valid certificate under s. 43(4) of the MACC Act. Accordingly, the impugned recordings and their associated

transcripts must be excluded from evidentiary consideration. The absence of this crucial evidence materially affects the integrity of the conviction and warrants appellate intervention.

Second Ground: Non-preparation Of Recovery Memo Under Section 33 Of The MACC Act 2009 In The Charge Against First And Second Appellants For Offence Under Section 17(a) Of The MACC Act 2009

[26] This court has carefully considered the parties' submissions concerning the non-preparation of a recovery memo in respect of the RM7,000 allegedly received by the first appellant during the first trap operation. The defence contends that the failure to document this recovery under s. 33 of the MACC Act is a critical omission that renders the prosecution's case fatally defective, particularly as the marked tainted money forms the core evidential link between the gratification and the accused.

[27] The prosecution submits that the entire trap operation constituted a single, continuous and coordinated transaction, which concluded only upon the recovery of the RM7,000 trap money from the second appellant. In this view, the initial solicitation, subsequent meetings, and final seizure were steps in a composite sting operation. The prosecution seeks to rely on oral testimony and video recordings to bridge the evidentiary chain and infer the prior transfer of the marked money from the first appellant to the second appellant. However, this court is of the view that such inferential reasoning cannot substitute the requirement for strict proof of each element of the charge. The omission is not a trivial procedural lapse, it goes against the requirement of a chain of evidence necessary to establish possession and recovery under s. 33 of the MACC Act 2009. In the Federal Court case of *Sia Soon Suan v. PP* [1965] CLJU 165; [1965] 1 LNS 165; [1966] 1 MLJ 116; [1965] 1 MLRA 32, Justice Ong Hock Thye FJ had to say at p. 118 the following:

> ... the requirements of strict proof in a criminal case cannot be relaxed to bridge any material gap in the prosecution evidence. Irrespective of whether the court is otherwise convinced in his own mind of the guilt or innocence of an accused, its decision must be based on the evidence adduced and nothing else.

[28] In corruption cases, particularly those involving trap operations, I hold that the law demands strict proof of receipt.

[29] In *Mohan Singh v. State Of Rajasthan* 1987 Law Suit (Raj) 188; 1987(2) WLN33, involving a corruption case, the High Court of Rajasthan had, after careful study of the cases referred to, ventured to state:

> 18. From a careful study of the aforesaid cases it is borne out that emphasis has been given on fairness of the investigation. It must be such which inspires the confidence and to judge the same. The evidence has to be scanned and weighed thoroughly and in doing so the documents

A prepared on the spot play an important part and all such documents must be placed before the Court. If no documents are prepared the cogent and convincing explanation must be furnished.

19. It is, therefore, essential that prosecution so long as possible must produce documentary evidence to substantiate the recovery of tainted
B notes. The full and complete procedure must be followed that is when the numbers of notes are taken down and initials done before the notes are handed over to the decoy for passing the same over to the accused and then the recovery is made after the trap. It is bounden duty of Investigating Officer to tally the numbers and check his initials thereafter he must prepare a memo in this respect and seal the notes recovered. This
C memo so prepared should contain the numbers of the notes recovered and fact about their sealing and the impressions of the seals. The purpose of this all is to ensure fair investigation and is a check for subsequent mischief. Similarly, hand wash should be sealed, its memo prepared with seal impression. In all the cases it is, therefore, essential to prepare the recovery/seizure memos and if such memos are not available that
D prosecution story normally be not accepted on the face value unless prosecution has offered an explanation which is cogent, convincing and plausible. The explanation has to contain reasons which may be for example, where documents are prepared but they are snatched and tern off by the miscreants to favour accused, there may be cases after filing the same, they are removed from the record, there may be cases that
E inadvertantly some part of it is left to be written *etc*. In absence of documentary evidence there must be unimpeachable oral evidence to substantiate prosecution case then alone the evidence must be accepted. In fact we do not consider it to be such a questions of law which can be answered on a reference to larger bench. Each case has to be decided on the evidence tendered. No hard and fast rule can be laid down while
F considering the quality of evidence. Due weight has to be given to all the surrounding circumstances and preparation of documents is one of the circumstances to corroborate the oral testimony. It can be held that in all circumstances the accused is entitled to be acquitted if memos are not prepared. We have set out some of general principle and do not think that
G the question requires to be answered one way or the other.

[30] Basically, in *Mohan Singh v. State of Rajasthan* (*supra*), the court expressed its view that in corruption cases, the prosecution must produce proper recovery memos and documentation of tainted money; without proof of these, the case may fail unless there is a convincing explanation for the
H absence of those documents.

[31] The evidential bar is not relaxed even where guilt appears probable, for conviction must rest on proof, not presumption. Moreover, this court finds that the learned trial judge erred in admitting the video recordings without a valid certificate under s. 43(4) of the MACC Act 2009. That
I finding further weakens the prosecution's reliance on the video footage as corroborative evidence to bridge the omission under s. 33. The net result of it is that the prosecution's case stands unsupported by contemporaneous

documentation or legally admissible audio-visual evidence, thereby failing to prove the element of receipt beyond a reasonable doubt. In the present case, not only did the prosecution fail to produce a recovery memo that could potentially corroborate the audio-visual evidence, but unfortunately, the audio-visual evidence itself is impugned because it lacks a valid certificate under s. 43(4) of the MACC Act. Therefore, on all scores the prosecution has failed to discharge the burden of proving the receipt of gratification beyond a reasonable doubt, and the learned Sessions Court Judge fell into serious error in finding otherwise.

[32] The chain of evidence must be clearly and independently established for each accused, particularly where the charge relates to a separate and distinct receipt. In this case, the RM7,000 was alleged to have been received solely by the first appellant, not jointly with the second appellant. The omission to prepare a recovery memo at the point of arrest undermines the verifiability of when, where, and how the marked notes were recovered from the first appellant. The assertion that the same money was later found on the second appellant cannot retrospectively validate the alleged recovery from the first appellant without independent corroboration.

[33] In the absence of any seizure list, recovery memo, physical verification, or acknowledgment by the first appellant and given the failure to provide the serial numbers and the impugned audio-visual recording of cash being physically recovered directly from the first appellant's, this court finds that such omissions cannot be dismissed as mere procedural irregularities curable under s. 422 of the Criminal Procedure Code. These failures occasion real prejudice and injustice to the appellants. Furthermore, the omission constitutes a breach of s. 64 of the Criminal Procedure Code, which provides:

> 64. List of all things made to be seized and signed "A list of all things seized in the course of a search made under this Chapter and of the places in which they are respectively found shall be prepared by the officer or other person making the search and signed by him.

[34] Furthermore, the failure to prepare a recovery memo constitutes a substantive evidentiary gap that breaks the chain of proof and renders the element of "receipt" under s. 17(a) of the MACC Act unproven.

[35] Accordingly, the court accepts the appellant's submission on this issue and finds that the non-preparation of the recovery memo fatally undermines the prosecution's case against the appellant, as the benefit of the doubt must be given to them.

Ground 3: Lack Of Investigating Officer's Independence In Joint Conviction Under Section 16(a)(B) Of The MACC Act 2009, Read With Section 34 Of The Penal Code

[36] This court accepts the appellants' submission that the investigating officer (PW19) lacked the necessary independence expected of an impartial and objective investigator. The evidence clearly shows that the investigating officer was directly involved in planning, briefing, and coordinating the entrapment operation that led to the arrest of both accused persons. Her admissions under cross-examination, namely, her presence at the pre-operation briefing, her communication with the complainant during the operation, and her knowledge of the planning and execution of the trap, demonstrate that she was not an independent investigator, but an active and important participant in the events forming the subject matter of the charge.

[37] This overlapping of roles fundamentally undermines the integrity of the investigation. As the investigating officer, she agreed, it is not reasonable for an officer to investigate a case in which they were operationally involved, as this creates a conflict of interest and a real risk of unconscious bias. The prosecution's attempt to downplay her involvement as merely "administrative" is not supported by the record. Her role extended to overseeing and real-time coordination, including knowledge of key operational details such as the use of marked money, the signal arrangements, and the movements of the complainant.

[38] In corruption prosecutions, where credibility and integrity of investigative processes are paramount, the role of an impartial investigating officer is not a procedural luxury afforded to the accused, it is a constitutional necessity that guarantees the liberty of a person. The assurance of an independent investigation is the cornerstone that preserves public confidence and prevents tainted proceedings.

[39] The court finds that the learned Sessions Court Judge failed to evaluate the implications of investigation officer dual role properly. The failure to ensure a separate, uninvolved investigating officer taints the fairness of the investigation and the reliability of the prosecution's case. This constitutes a serious irregularity warranting appellate intervention.

Ground 4: Delay In Lodging Report (P27) And Omission To Mention Solicitation

[40] The court finds merit in the appellant's contention that the delay in lodging the SPRM report (P27) and the omission to mention the alleged solicitation by the appellant therein raise a material doubt on the credibility of the complainant (SP3). It is trite that the first information report (FIR), although not substantive evidence, serves as the earliest account of the incident and is a relevant factor in assessing witness reliability.

[41] As such, failure to mention a crucial fact, such as the accused's involvement, in the earliest report cannot be dismissed as a mere omission, especially where no reasonable explanation is given.

[42] This concern is amplified by the holding in *PP v. Hassim Ma'asah* [2012] CLJU 595; [2012] 1 LNS 595; [2012] 10 MLJ 741; [2013] 1 AMR 33, where the court held two witnesses' delays in reporting the alleged bribe had seriously undermined their credibility. One witness, who was the direct victim of the alleged solicitation, was expected to make a prompt complaint but failed to do so and gave no explanation. Another witness who lodged a report but experienced a two-week delay likewise did not explain the delay. This casts further doubt on the truth of the accusation. The court inferred that such conduct was inconsistent with genuine outrage or fear of corruption and suggested the complaint may have been motivated by personal resentment or an ulterior motive rather than by actual wrongdoing of the accused. The relevant passage from the case is appended below:

> [221] ... if it was indeed true that the accused had solicited the bribe from PW7 two weeks earlier, it was incumbent on PW7 to promptly lodge a report against the accused but he did not do it. He also failed to give any reason why he did not lodge the report himself and why PW11 had to lodge it.
>
> [222] PW11 also did not give any reason why it took him two weeks to lodge the report against the accused. He had also testified that one of the reasons why he was afraid of the accused was that he frequented the night club and that the police would find fault with and arrest the patrons including him if they had no other work to do. Hence, he had an ulterior motive for lodging the report quite apart from what he had alleged was told to him by PW7.

[43] The principle in *Tengku Mahmood v. PP* [1974] CLJU 176; [1974] 1 LNS 176; [1974] 1 MLJ 110, as explained by His Lordship Raja Azlan Shah FJ (later His Majesty YDPA), requires that the credibility of a complainant be assessed against the whole of the evidence and the probabilities of the case, not merely on demeanour. Motive and delay are crucial factors. His Lordship cautioned that where allegations of corruption are easily made, a judge must guard against the possibility of fabrication, especially when the complainant's pride or resentment may be involved. A complaint, to carry weight, must therefore be made voluntarily and at the earliest opportunity, not after an undue lapse of time that invites suspicion of falsification. His Lordship Raja Azlan Shah FJ observed:

> The central question to be considered in this appeal is whether on the record, as it stands, the learned president was right in accepting the complainant as a witness of truth.
>
> ... impression as to demeanour of a witness must be critically tested against the totality of his evidence. Now, the learned president, it is true, had a great advantage over this court. He saw and heard the witness and

A I did not. But the demeanour is not always the touch-stone of truth. It is only one ingredient in arriving at a finding of credibility. But so also is motive. Although in cases of this kind it is not easy to get satisfactory evidence, one must not also lose sight of the fact that at the same time it is indeed easy to 'fix' a man in the position of the appellant. *A man who was not successful before the Public Services Commission may have hurt his pride* B *and hurt pride is a ferocious beast. It is for this reason that a judge of fact should always test the complainant's evidence against the totality of his evidence and the probabilities of the case*. Failure to do so does amount, in my view, to a misdirection, and if it can be demonstrated that the trial judge had failed to do that, his conclusion as to credibility, cannot, in justice, be regarded as impeachable, much less unimpeachable. It would therefore be not just C for an appellate court to regard itself as compelled to regard as conclusive his finding on the issue of credibility. The whole matter can be considered afresh. Further, the graver the issue involved, and particularly when an allegation of corruption is in the air, the greater is the necessity for the appellate court to enquire whether the conclusion as to credibility is one D that must under the law be regarded as, for all practical purposes, irrefragable. There are a number of grounds of appeal but the cumulative effect of those can compendiously be put in one sentence; that the propriety of the case does not justify a conviction on the uncorroborated evidence of the complainant ...

(Continued at page 112)

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... complaint can only be used as evidence of the consistency of his conduct with the story told by him in court. In other words, it can only be used as evidence of credibility of his testimony to the alleged agreement but there are limits to its admission. It must be made voluntarily and at the earliest convenient moment. It must not be made F after a long lapse of 13 days as to allow fabrication.

(emphasis added)

[44] Applying these principles, the court finds that the unexplained delay in complaining and the omission to mention any demand of RM10,000 in the earliest report fatally weaken the prosecution's case. The entire soliciting G charge rests solely on complainant's uncorroborated testimony, which the court views with caution. The evidence shows that the raid conducted at the complainant's KTV premises resulted in the arrest of several foreign women, causing substantial loss to his business and injury to the complainant's pride. His anger and motive to retaliate against the accused cannot be discounted, H as "hurt pride is a ferocious beast". The complainant's conduct in offering inducements to the authorities to protect his business borders on infamous conduct. His evidence was inconsistent and unreliable, showing apparent personal dislike and bias against the accused, and therefore cannot be believed. The court therefore holds that the delay and omission are not mere I procedural lapses but severe evidentiary defects striking at the very root of the prosecution's case.

[45] Further, this court also finds the failure to mention the demand by the first appellant at the earliest opportunity, coupled with the absence of corroborative testimony or contemporaneous documentation, undermines the complainant's credibility. The prosecution argues that the omission does not affect the veracity of the complainant's testimony in court. However, in view of the decisions in *Magendran Mohan v. PP* [2011] 1 CLJ 805; [2012] 5 MLRA 333; [2011] 6 MLJ 1 and *Ramli Sutu v. PP* [1998] 5 CLJ 671; [1998] 3 MLRH 31, this court is reminded that the testimony of a trap witness, particularly one who is partisan or has a personal interest, must be approached with caution and cannot stand on its own in the absence of independent corroboration. In *Magendran Mohan* (*supra*), His Lordship Alauddin Mohd Sheriff PCA stated:

> [21] It is clear to us that from her testimony she was an interested witness with a grudge against the appellant and had a purpose of her own to serve. In our judgment her evidence must be treated with caution and requires corroboration.
>
> [22] In *Liow Siow Long v. PP* [1969] 1 MLRH 577; [1970] 1 MLJ 40, Raja Azlan Shah J (as His Highness then was) had this to say (at p 41) in respect of interested witnesses:
>
> > Testimony of close relations is not tainted if it is otherwise reliable in the sense that the witnesses and competent witnesses who were at the scene of the occurrence and could have seen what had happened. But if it is proved that they are not entirely disinterested witnesses *eg*, they are either partisans of the complainant or are in any way inimical to the accused, then their testimony is tainted and requires corroboration if to be acted upon.
>
> [23] The same learned judge in *Lim Boon San v. PP* [1967] 1 MLRH 597; [1968] 2 MLJ 45 held that where a witness may be regarded as having a purpose of his own to serve, the judge must direct his mind on the danger of convicting on the uncorroborated evidence of such witness. In the instant appeal before us we find that PW5 was undoubtedly hostile towards the appellant and we regret to say that there was no corroboration of such evidence by either PW8 (sister) or PW11 (mother). If we may add, the evidence of PW5, PW8 and PW11 were most inconsistent with one another. With the greatest of respect to the High Court Judge and the judges of the COA we must say that they have failed to direct their minds on this point and for this reason we rule that there was a serious misdirection by way of non-direction which had occasioned a miscarriage of justice

[46] In *Ramli Sutu* (*supra*) 671 at held no. 2 it states:

> [2] PW1 was a trap witness. A trap witness is an interested party and his evidence must be corroborated. A trap witness also cannot corroborate another trap witness. The learned Sessions Court Judge had failed to adequately warn herself of the danger of convicting on the uncorroborated evidence of a trap witness and this was a misdirection.

[47] Furthermore, no credible explanation was provided by the complainant for failing to name the appellant in his report, despite having alleged a demand for gratification, a central element of the offence of solicitation under s. 16(a)(B) of the MACC Act 2009. This omission deprives the prosecution of crucial corroboration, rendering the charge of solicitation inherently unsafe.

[48] Accordingly, this court finds that the learned Sessions Judge erred in relying on uncorroborated and incomplete testimony. The conviction based on the complainant's evidence is unsafe and cannot stand.

Ground 5: On The Misapplication Of Section 50(1) Of The MACC Act 2009

[49] This court has carefully considered the defence's challenge to the trial court's invocation of the statutory presumption under s. 50(1) of the MACC Act 2009. The defence argues, and this court agrees, that the learned Sessions Court Judge (LSJ) erred both in law and in fact in invoking the presumption in the absence of proof of the essential fact, namely, the receipt of gratification by the appellants.

[50] The said s. 50(1) of the MACC Act 2009 provides:

> Section 50 Presumption in certain offences
>
> (1) Where in any proceedings against any person for an offence under section 16, 17, 18, 20, 21, 22 or 23 it is proved that any gratification has been received or agreed to be received, accepted or agreed to be accepted, obtained or attempted to be obtained, solicited, given or agreed to be given, promised, or offered, by or to the accused, the gratification shall be presumed to have been corruptly received or agreed to be received, accepted or agreed to be accepted, obtained or attempted to be obtained, solicited, given or agreed to be given, promised, or offered as an inducement or a reward for or on account of the matters set out in the particulars of the offence, unless the contrary is proved.

[51] It is well settled that before the statutory presumption under s. 50(1) of the MACC Act can operate, the prosecution must first prove, through admissible and credible evidence, that the accused actually received the alleged gratification. This is a foundational fact that must be established beyond a reasonable doubt. In this case, the prosecution failed to do so. There was no contemporaneous record of recovery, no recovery memo, and the video evidence was wrongly admitted without a valid certificate under s. 43(4) of the MACC Act. In such circumstances and with all the setbacks that were discussed above, it is abundantly clear that the basic fact of receipt is not proven to the requisite element of the charge against the appellants.

[52] The learned Sessions Court Judge applied the presumption without meeting the required legal conditions. By doing so before proving that the accused actually received the money, the court wrongly shifted the burden of proof to the accused.

[53] Accordingly, this court finds that s. 50(1) of the MACC Act 2009 was wrongly invoked. The legal and evidentiary prerequisites for its application were not met. The application of the presumption materially prejudiced the appellant and contributed to a miscarriage of justice. The conviction under the affected charge, therefore, cannot be sustained.

Sentence

[54] Though I find that the convictions of the appellants by the Sessions Court cannot be sustained and must accordingly be set aside, for the sake of completeness, I observe that the sentence of imprisonment and fine imposed by the Sessions Court was reasonable and proportionate to the seriousness of the offence. It was not too harsh nor too lenient. The appellate courts seldom interfere with the exercise of discretion in sentencing merely due to disparity, unless there exists a compelling justification showing that the court failed to apply settled principles in sentencing. This position was aptly articulated by Raja Azlan Shah LP in *Bhandulananda Jayatilake v. PP* [1981] CLJU 139; [1981] 1 LNS 139; [1982] 1 MLJ 83:

> That is quite inevitable. Human nature being what it is, different judges applying the same principles at the same time in the same country to similar facts may sometimes reach different conclusions (see *Jamieson v. Jamieson* [1952] AC 525, 549). It is for that reason that some very conscientious judges have thought it their duty to visit particular crimes with exemplary sentences; whilst others equally conscientious have thought it their duty to view the same crimes with leniency. Therefore, sentences do vary in apparently similar circumstances with the habit of mind of the particular judge. It is for that reason also that this court has said it again and again that it will not normally interfere with sentences, and the possibility or even the probability, that another court would have imposed a different sentence is not sufficient, *per se*, to warrant this court's interference.

Conclusion

[55] Having carefully considered all grounds of appeal and the evidentiary shortcomings identified, this court finds that the convictions entered against both appellants under s. 17(a) and s. 16(a)(B) of the MACC Act 2009 are unsafe. The learned trial judge erred in both law and fact on multiple material points, including the admissibility of evidence and the misapplication of statutory presumptions. Accordingly, all three convictions and corresponding sentences are hereby set aside. Both appellants are acquitted and discharged of all charges. Bail is refunded, and any further orders are hereby vacated.

[56] The prosecution's appeal on sentence does not warrant intervention and shall accordingly be dismissed, irrespective of the outcome of the appellants' appeals on conviction.